



## VARIANCE (VAR) APPLICATION SUMMARY

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Welcome to the Community Development Department's Citizen Summary of the Variance process.

### GENERAL INFORMATION

#### What is a Variance?

A Variance authorizes a particular property to be exempt from complying with a specific development requirement when special and unusual circumstances related to that property would cause an unnecessary hardship. It is a safety valve providing flexibility to address individual situations.

#### Can a Variance Application allow a use that is not allowed in a given Planning District?

No. A Variance can be approved only for the requirements, not the uses, of the Planning Districts (Tualatin Development Code, Chapters 40 – 69), Signs (Chapter 38) and Floodplains, Wetlands, Greenways and Community Design (Chapters 70 – 73, respectively). For example, an applicant may request a building to be closer to a property line than the regulation allows due to an unusual steep slope on the property.

#### Where can I read the City's Code requirements for Variance Applications?

The Variance requirements are in Chapter 33 of the Tualatin Development Code (TDC) which is in the Library and online at [www.tualatinoregon.gov](http://www.tualatinoregon.gov). At the homepage click Planning & Zoning, click Comp. Plan & Dev Code, click Development Code, and then Chapter 33.

#### Who makes the decision on Variance Applications?

The Tualatin Planning Commission. Before a Variance is allowed, the Planning Commission must hold a public hearing, apply the criteria listed in the TDC 33.020 and then approve the Variance, approve it with conditions to mitigate negative effects or deny it. Variances are generally difficult to obtain.

### THE APPLICATION PROCESS

#### Is the applicant required to conduct a pre-application meeting with City staff?

Yes, per TDC, 33.030. At the pre-application meeting the applicant shows the City staff the plans of the proposed development. They discuss the applicable City requirements and how the proposal meets the requirements. Typically, a lot of contact occurs before the meeting and there are a lot of follow-up discussions after the meeting to resolve issues identified at the meeting.

### Is the applicant required to conduct a pre-application neighborhood meeting with the surrounding property owners?

Yes per TDC, 31.063(1), except for existing single family residences. The applicant mails invitations to owners of properties; City approved Neighborhood Associations within 1,000 feet of the subject property, and Citizen Involvement Organizations (CIO's). At the meeting the applicant should explain the proposal and listen to the concerns. If the 1,000-foot area includes lots within a platted residential subdivision the area shall extend to include the entire subdivision of which the lots are part and the applicant shall identify these subdivisions for staff. If the residential subdivision is one of two or more individually platted phases sharing a single subdivision name the notice area need not include the additional phases. Although the concerns are not required to be mentioned, addressed or incorporated into the application, the approval process may be easier if they are.

### How is a Variance Application submitted?

After the Neighborhood Meeting the applicant submits the application and fee to the Community Development Department. The application must explain how the request meets the first approval criteria in the TDC, 33.020 and three of the remaining four criteria. They are:

- (1) A hardship is created by exceptional or extraordinary conditions applying to the property that do not apply generally to other properties in the same planning district or vicinity and the conditions are a result of lot size or shape, topography, or other physical circumstances applying to the property over which the applicant or owner has no control.
- (2) The hardship does not result from actions of the applicant, owner or previous owner, or from personal circumstances or financial situation of the applicant or owner, or from regional economic conditions.
- (3) The variance is necessary for the preservation of a property right of the applicant or owner substantially the same as is possessed by owners of other property in the same planning district or vicinity.
- (4) The variance shall not be detrimental to the applicable objectives of the Tualatin Community Plan and shall not be injurious to property in the planning district or vicinity in which the property is located.
- (5) The variance is the minimum remedy necessary to alleviate the hardship.

### What happens once the application is submitted?

A planner in the Community Development Department is assigned the application. When all the materials are included, the planner determines the application is complete and circulates copies to other City departments and to applicable regional and State agencies for their review and comment. The planner schedules a Planning Commission public hearing about 6 to 8 weeks later. The Planning Commission meets at 6:30 p.m. on the 1st Tuesday of each month at the Council Chambers (18880 SW Martinazzi Ave.).

## **THE PUBLIC HEARING**

### Who gets notice of the Planning Commission public hearing?

A notice is mailed at least 20 days prior to the public hearing to the owners of properties within 300 feet of the subject property and to the City approved Neighborhood Association whose boundary includes the site. Parties with questions or written comments should contact the planner as soon as possible so the comments can be addressed in, and attached to, the staff report. Comments must be specific to one or more of the criteria so the planner and Council will know what the concern is and can address it. Conditions of approval are not common, but conditions to reduce or prevent negative effects are possible.

Does the Planning Commission get any information before the hearing?

Yes. The Commissioners receive their meeting packets, including the staff report, at least one week prior to the hearing so they can read the staff report, its recommendation and any written comments. The staff report is available to all parties one week prior to the hearing.

What happens at the Planning Commission public hearing?

At the Planning Commission meeting the Chairman opens the public hearing and the planner enters the staff report, the staff recommendation and any written comments into the hearing record and provides an oral summary of the report. Next, the applicant testifies followed by supporters and then opponents testify. The applicant may then rebut. The Planning Commission asks questions of staff and the testifiers. Once all the information is in the record, the hearing is closed and Planning Commission deliberates to a decision which is in the form of an oral motion to approve, approve with conditions or deny the application.

Is there a deadline when the Planning Commission must make a decision?

Yes. State law requires a decision be made within 120 days of the application being complete.

Can the Planning Commission's decision be appealed?

Yes, to the City Council.

The Council will hold a public hearing on the appeal. A Resolution, the final written decision, is passed by Council at the next meeting. Once the Resolution is passed, staff mails copies to the parties that appeared at the hearing or entered information into the record. A party can appeal the decision to the Land Use Board of Appeals (LUBA). The "Notice of Intent to Appeal" must be received by LUBA within 21 days of the decision becoming final (the date the Resolution was passed).

How do I contact the Planning Commission prior to the public hearing?

As the decision maker, the Planning Commission is a quasi-judicial body and must be impartial. Commissioners must make their decision based only on information entered into the hearing record and the approval criteria. To ensure impartiality, they should not have "ex-parte contacts," i.e., discuss the application outside the hearing with any party, except staff. This is to ensure all parties are aware of all the information each Commissioner is relying on to make their decision and giving the parties an opportunity to respond.

If you have questions about the Variance process, please contact the Community Development Dept. Office Coordinator at (503) 691-3026 and you will be directed to the appropriate planner.